IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

NO. 73-5845

CATHERINE JACKSON, On Behalf of Herself and All Others Similarly Situated,

Petitioner

v.

METROPOLITAN EDISON COMPANY, a Pennsylvania Corporation,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENT METROPOLITAN EDISON COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

RUSSELL J. O'MALLEY
PAUL A. BARRETT
420 Miller Building
422 Spruce Street
Scranton, Pennsylvania 18503
Attorneys for Respondent,
Metropolitan Edison Company

December 31, 1973

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QUESTIONS PRESENTED FOR REVIEW

1. Whether a privately owned public utility, subject in some particulars to detailed governmental regulation and free of competition within the sphere of its franchise, acts under color of state law when, absent specific statutory authority and governmental participation or significant support and pursuant only to its own rules filed with a regulatory body, it terminates service to a defaulting customer.

2. Whether the right, if any, of a defaulting consumer of privately furnished electrical energy to continued service is federally protected and, if so, whether procedural due process requires, in addition to sufficient notice of intent to terminate, a hearing prior to disconnection.

STATEMENT OF THE CASE

Respondent is a privately owned public utility which furnishes electrical service in the York, Pennsylvania, area. After the account with respect to petitioner's home fell into arrears, after personal notice to her that unless the arrearage was promptly paid service to her would be discontinued, and after failure within the prescribed time to cure the default, respondent terminated service by disconnection at a utility pole near to, but not upon, her premises. No Pennsylvania statute authorizes termination and no regulation of the Pennsylvania Public Utility Commission specifically provides for discontinuance of service for nonpayment of bill. Respondent in so acting avails itself of a right it believes the common law to have recognized from times immemorial, which right it reserved in its own rules and regulations published as its tariff and filed with the Pennsylvania Public Utility Commission. The failure of a utility subscriber to pay for service supplied is not punishable in any way by statute, ordinance, custom or usage, nor are there enforcement procedures, other than those available to creditors generally, designed to effect collection of utility charges past due. True, privately owned utility companies do in fact "shut off" service to those unwilling or unable to pay therefor but, when they do, they do so on their own, so to speak, and are not aided, supported, or in any way encouraged so to do by the state or any of its political subdivisions. They act -- respondent here so

acts -- in exercise of their right to protect their investment by supplying only those from whom they collect. They produce at their own cost and expense electrical energy; it is not given to them by the state; and, while they recognize that theirs is a business affected with a public interest, they do not -- respondent does not -- either concede or believe that they are performing a governmental duty, a function that the state would be obligated to perform if they did not.

SUMMARY OF ARGUMENT

Special and important reasons for allowance of writ of certiorari do not obtain here and, in particular, the decision below is not in conflict either with those of other courts of appeals on the same matter or with applicable decisions of this court, nor does it present an important question of federal law which should be settled by this Court.

ARGUMENT

Rule 23 of this Court's revised rules, Section 1 (c), requires a petition for writ of certiorari to contain the questions presented for review "expressed in the terms and circumstances of the case . . .". Rule 40, Section 3, of the same revised rules, made applicable to briefs in opposition to petitions for certiorari by Rule 24, excuses exclusion from respondent's brief of a statement of questions presented, unless respondent be dissatisfied with their presentation by the petitioner. Respondent, convinced that petitioner's first statement of questions presented is not expressed in the terms and circumstances of this case and, accordingly, being dissatisfied therewith, has attempted to pose the question presented in a way in keeping with the facts thereof. Petitioner's first question states, as a premise, that the public utility in question is required to conform its termination practices to a statutory standard of reasonableness and regulatory review. It also posits that the public utility in question is in fact engaged in a public function, which presupposition, though arguable so long as the supposed public function is not equated with governmental functions performed in fulfillment of governmental duty, is at best an unproved premise from which a conclusion, favorable to petitioner, is sought to be drawn. Lastly, the first question

presented by petitioner neglects to identify the respondent as a privately owned public utility as opposed to a municipal public utility.

There is no quarrel with petitioner's premise that respondent is subject to substantial government regulation for, indeed, it is, in some particulars not bearing on termination procedures, subject to such regulation. There is no quarrel either with petitioner's reference to respondent's freedom from competition within the franchise area or with petitioner's characterization of same as a "monopoly," except that respondent would point out that the monopoly resulting from the lack of competition is more a natural monopoly, an economically natural monopoly, than "a state authorized monopoly" or "a state created monopoly" as variously stated by petitioner.

Contrary to petitioner's assertion that respondent is required to conform its termination practices to a statutory standard of reasonableness and regulatory review, respondent finds no statute specifically authorizing termination nor indeed any specific authorization to terminate from the regulatory body, the Pennsylvania Public Utility Commission.

So far, in respondent's view, does petitioner depart from the rule that statements of questions presented be expressed in the terms and circumstances of the case that respondent fears that, should this Court grant certiorari based on this question, as stated, it may have undertaken to resolve a controversy not before it in this case.

That when petitioner speaks of public function she means a function that would have to be performed by the State in the event that private public utilities should refuse to perform the same is indicated in her petition, at page 6, when she, referring to the Commonwealth of Pennsylvania, speaks of "cost savings" to it "in not having to be the direct supplier of utility service." Respondent knows of no law that compels the state or any of its political subdivisions to perform, as a governmental duty, the functions of supplying private electrical power or service to the citizenry. On the contrary, Pennsylvania's court of last resort seems clearly to have rejected the notion that the furnishing of utility service is the performance of a governmental duty.

In Baily v. Philadelphia, 184 Pa. 594, 39 Atl. 494 (1898) Justice

Mitchell for the Pennsylvania Supreme Court stated (p. 602):

> ". . . However much the idea that the city is not required by its municipal duty to supply its citizens with light in the streets and public places, may seem to fall below the modern conception of a city, it is beyond question on settled legal principles, that in the performance of that function the city acts under authority merely and not under municipal obligation. This was the rule of the common law, and no statute in reference to the city of Philadelphia has altered it . . . "

During the course of the Pennsylvania Supreme Court's opinion in that case, the court indicates that the appellant's various positions bring the court "back again to the preliminary question . . . whether supplying the public places and private citizens with gas for lighting purposes is a strictly muncipal function." (p. 604) And, repeatedly, the Court rejects the concept that the furnishing of such service by a municipality is a municipal function or duty. The Court is categorical in rejecting the contention "that public lighting is a municipal duty." (p. 605)

In Girard Life Insurance Co. v. The City of Philadelphia, 88 Pa. 393 (1879), the Pennsylvania Supreme Court stated:

> ". . . The supplying of water and gas to a City is not a municipal duty. Hence, when the city undertakes to do so, it acts, not by virtue of any rights of sovereignty, but exercises merely the functions of a private corporation: Western Saving Fund Society v. The City, 7 Casey 175; Wheeler v. The City, 27 P. F. Smith 338. It may very well be that when a license has been given by the city to the owner of a house to use the water, such license may not be withdrawn arbitrarily, or for mere caprice. But it is equally clear that the city may adopt such rules in regard to the use of the water and the payment therefor, as the muncipal authorities shall deem expedient."

Respondent believes that the businesses of public utilities are affected with a public interest no less so than were the grain elevators in Chicago as determined in this Court's famous opinion in Munn v. Illinois, 94 U. S. 113 (1876). Respondent would concede that it, and other privately owned public utilities, perform what is customarily regarded as a "quasi public function" but respondent rejects, even as the Pennsylvania Supreme Court has rejected, the idea that, were no private public utilities found who would supply the citizenry of Pennsylvania with power to light their homes, etc., the state or its several political subdivisions would be bound so to do. No governmental function is involved here.

The public function theory, first articulated in Marsh v. Alabama, 326 U. S. 501 (1946), has not been broadened by subsequent decisions of this court

so as to subject privately owned utilities to the constraints of The Fourteenth Amendment to the Constitution of the United States, absent significant state involvement in the complained of private action. It will be remembered that in Marsh the Court concluded that the operation of a privately owned company town constituted the performance of a public function. The administration of cities and towns is unquestionably governmental by nature. In Evans v. Newton, 382 U. S. 296, (1966), in a passage appearing immediately following a quotation from an earlier opinion to the effect that formally private conduct may become so entwined with governmental policies or so impregnated with governmental character as to become subject to the constitutional limitations based upon State action, this Court said:

> ". . . The action of the city in serving as trustee of property under a private will serving the segregated cause is an obvious example. . . A town may be privately owned and managed, but that does not necessarily allow the company to treat it as if it were wholly in the private sector. Thus we held in Marsh v. Alabama, 362 U. S. 501, 66 S. Ct. 276, 90 L. Ed. 265 that the exercise of constitutionally protected rights on the public streets of a company town could not be denied by the owner . . . We have also held that where a State delegates an aspect of the elective process to private groups, they become subject to the same restraints as the State. Terry v. Adams, 345 U. S. 461, 73 S. Ct. 809, 97 L. Ed. 1152."

Other decisions by this Court based upon the public function theory are cases wherein the functions performed were traditionally governmental by nature. Thus, presented with a Georgia statute which directed the suspension of vehicle registration and drivers' licenses of uninsured motorists involved in accidents unless security to cover the damages claimed by the aggrieved parties in reports of the accident was posted, the Court in Bell v. Burson, 402 U. S. 535, 91 S. Ct. 1586 (1971), understandably found governmental function involved. No one can seriously question that the registration of motor vehicles and issuing and suspending drivers' licenses are traditionally functions of a governmental nature.

In Goldberg v. Kelly, 397 U. S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970) this Court found state action to exist in the context of a state's withholding welfare benefits from a relief recipient. There can be little question but that the conferral of welfare benefits is a peculiarly state function.

We have earlier stated that no Pennsylvania statute specifically authorizes a utility to terminate service for nonpayment of bill. But the Petition for Writ of Certiorari states that there is a "commission regulation specifically dealing with the termination of services" and that that Commission Regulation is Pennsylvania Public Utility Commission Tariff Regulation Section VIII quoted in appendix III. We submit that this commission regulation does not specifically deal with service termination for nonpayment of bill. It reads:

> "Every public utility that imposes penalties upon its customers for failure to pay bills promptly, or allows its customers discounts for prompt payment of bills, shall provide in its posted and filed tariffs a rule setting forth clearly the exact circumstances and conditions in which the penalties are imposed or discounts are allowed. The tariff shall also indicate clearly whether, if bills are paid by mail, the date of the postmark will be considered the date of payment."

This commission regulation does not specifically authorize termination and petitioner's statement that it does necessitates a reading into the regulation of a provision not contained therein.

The only provision specifically providing for termination of service for nonpayment of bill is a provision found not in any statute, not in any commission regulation, but in respondent's own rules and regulations posted and filed with the commission as part of its tariff. In respondent's electric tariff No. 4 the company reserves the right to discontinue its service on reasonable notice in case of nonpayment of bill. This is the sole provision specifically dealing with termination for nonpayment of bill and is a provision found only in respondent's own rules and regulations. Petitioner's reference, in her statement of the first question presented, that respondent is "required to conform its termination practices to a statutory standard of reasonableness and regulatory review" is without specific underlying statutory or regulatory substance. The General Assembly of the State of Pennsylvania has not specifically authorized termination for nonpayment of bill nor has the Pennsylvania Public Utility Commission expressly authorized such termination.

It is not the position of the respondent that a public utility company cannot be held liable under the Civil Rights Act. It, like any other private entity, can properly be held liable under that act when, in its enforcement of even its own rules and regulations, it derives significant affirmative support from the

state or any of its political subdivisions. Boman v. City of Birmingham, 280 F. 2d 531 (5th Cir. 1960), is such a case. It appears from Boman that on the same day that the City of Birmingham repealed an ordinance requiring separate seating on city buses of negro and white persons, it adopted a new ordinance providing express authorization for carriers of passengers for hire in the City of Birmingham to formulate and promulgate such rules and regulations for the seating of passengers on public conveyances in their charge as are reasonably necessary to assure the speedy, orderly, convenient, safe and peaceful handling of passengers. More in point, the ordinance also expressly provided that a wilful refusal by any passenger to obey a reasonable request of an operator or driver of such a public conveyance relating to the seating of passengers constituted a breach of the peace. Certain passengers refused, following a request by the driver of a bus, to sit in the rear thereof. They were arrested, charged, convicted, sentenced, and jailed. There is little question but that the rule of the Birmingham Transit Company in relation to the seating of passengers was affirmatively supported by express punitive, municipal action and authority and that, in effect, the City of Birmingham delegated to the privately owned public utility the right to adopt a rule, the violation of which would be punishable by conviction. In such a case the involvement of the state or of one of its political subdivisions is too obvious to dispute. In the case presently before this Court, the rule of Metropolitan Edison relating to termination for nonpayment of bill finds no similar affirmative or significant support in any statute or ordinance of the State of Pennsylvania or City of York known to us. A non-paying subscriber to utility service is not subject to state or municipal penal action. If any such subscriber were subject to such action, a different case would be presented. Indeed, the Court in Boman recognized that the adoption by a private corporate entity of a rule is one thing and express municipal authority providing for punishment for violation thereof is quite another. In Boman the Court said: (p. 535)

> "Of course, the simple company rule that Negro passengers must sit in back and white passengers must sit in front, while an unnecessary affront to a large group of its patrons would not effect denial of constitutional rights if not enforced by force or by threat of arrest and criminal action. Where, as here, the City delegated to its franchise holder the power to make rules for seating of passengers and made the violation

> of such rules criminal . . . we conclude that the Bus Company to that extent became an agent of the State and its actions in promulgating and enforcing the rule constituted a denial of the plaintiff's constitutional rights."

Boman is clearly distinguishable from the case at bar.

Neither does the concurrence of pervasive regulation of public utility companies by a public utility commission and a private utility's exercise of its franchise free of competition within the sphere thereof serve to convert essentially private action into action taken under color of state law.

In Public Utilities Commission v. Pollak, 343 U. S. 451 (1952) this Court passed upon the applicability of the First and Fifth Amendments to the Constitution of the United States to radio programming on the conveyances of a privately owned public utility and, in holding those amendments applicable thereto, made clear those circumstances of the case upon which it was not relying and those aspects of the case upon which it was relying. It is clear that it did not rely upon the fact that the privately owned utility enjoyed a monopoly within the District of Columbia. It indicated that it "recognized" that the operations of the transit company were regulated by the Public Utilities Commission of the District of Columbia. But the feature of the case upon which this Court "particularly" relied was affirmative federal action found to have occurred when, following the Public Utilities Commission directive ordering an investigation, the Commission directed the dismissal of that investigation after formal public hearings. The Court's words were:

> "In finding this relation we do not rely on the mere fact that Capital Transit operates a public utility on the streets of the District of Columbia under authority of Congress. Nor do we rely upon the fact that, by reason of such federal authorization, Capital Transit now enjoys a substantial monopoly of street railway and bus transportation in the District of Columbia. We do, however, recognize that Capital Transit operates its service under the regulatory supervision of the Public Utilities Commission of the District of Columbia which is an agency authorized by Congress. We rely particularly upon the fact that that agency, pursuant to protests against the radio program, ordered an investigation of it and, after formal public hearings, ordered its investigation dismissed on the ground that the public safety, comfort, and convenience were not impaired thereby . . ." (Emphasis supplied)

In Moose Lodge No. 107 v. Irvis, 407 U. S. 163 (1972) this Court had before it a case wherein it appeared that the State of Pennsylvania, through the agency of its Liquor Control Board, pervasively regulated its licensees. Notwithstanding such pervasive regulation, this Court noted:

> "However detailed this type of regulation may be in some particulars, it cannot be said to in any way foster or encourage racial discrimination. Nor can it be said to make the state in any realistic sense a partner or even a joint venturer in the club's enterprise . . . ".

The same is true of the detailed regulation by the Pennsylvania Public Utility Commission of the private holders of utility franchises. However detailed the regulation may be in some particulars, it does not foster or encourage termination of utility service nor does it make Pennsylvania or any of its political subdivisions a partner or joint venturer with private utility companies.

There being no express statutory authorization in Pennsylvania enabling a public utility company to terminate for nonpayment of bill, it remains to inquire whether under Pennsylvania custom or usage public utility companies are regarded as so closely akin in nature to the State as to subject them to constraints of the Fourteenth Amendment to the United States Constitution. In this connection, we cite N.A.A.C.P. v. P.U.C. & Phila. Elec. Co., 5 Commonwealth Ct. 312 (1972) wherein Pennsylvania's Commonwealth Court expressly held as follows: (p. 327-328)

> ". . . We hold that public utility companies, owned and operated by private interests, under Pennsylvania law and usage, are not so involved with State government as to constitute their action, of whatever nature, state action subject to Fourteenth Amendment protection."

The Decision of the Court Below Is Not in Conflict With Decisions of Other United States Circuit Courts of Appeals

Differences in decisional result in cases presenting differing factual situations should not be ascribed to a presumed uncertainty of applicable law when it is reasonably clear that the approaches taken by the several courts in their attempted resolution of the question are basically common and that the varying results are, in the main, due to major distinguishing factual characteristics. It is undisputable that the Courts of Appeals for the Sixth Circuit in Palmer v. Columbia Gas of Ohio, Inc., 479 F. 2d 153 (6th Cir., 1973) and for the Eighth Circuit in Ihrke v. Northern States Power Company, 459 F. 2d 566 (8th Cir., 1972), decided questions relating to the same matter differently than have the Courts of Appeals for the Seventh Circuit in Lucas v. Wisconsin Electric Power Company, 466 F. 2d 638 (7th Cir., 1972), cert. denied 409 U. S. 1114 (1973) and Kadlec v. Illinois Bell Telephone Co., 407 F. 2d 624 (7th Cir., 1969) and for the Third Circuit in Jackson v. Metropolitan Edison Company, 483 F. 2d 754 (3rd Cir., 1973), but it is not at all clear that any of those courts, if presented the cases which were determined by the other courts, would have decided them differently than they were decided. Though the court below, seeing the decisions of the Courts of Appeals for the Sixth and Eighth Circuits differing from those of the Seventh Circuit, observed that (AII-3):

> "(w)hile on the facts the situations in the reported cases are capable of distinction, an objective appraisal might suggest that the differing results represent a continued uncertainty as to the application of the 'color of state law' test",

one such objective appraisal appearing in a Note entitled "Liability of a Privately Owned Utility Under 42 U. S. C. § 1983", 34 Ohio State Law Journal 222 (1973), discussing Palmer, Lucas and Ihrke, supra, suggests the compatibility rather than any irreconcilability of the cases, the author concluding (p. 227):

> "Taking Palmer and Ihrke together, it appears that, while a very expanded notion of state action is suggested, both

> decisions can be explained along traditional lines of analysis -- significant state involvement is present when a private individual acts pursuant to specific state authorization or when private conduct directly benefits the state. Under such circumstances, a utility, or any other private activity, should be subject to liability under § 1983 . . ."

The decision of the court below is not in conflict with either that of Palmer or Ihrke. In Palmer, the Court of Appeals for the Sixth Circuit was presented with specific statutory authorization expressly permitting (1) termination of utility service for nonpayment of bill and (2) entry upon the premises of the subscriber to effectuate termination. No parallel enactment expressly authorized either termination of service or entry upon the customer's property either in Lucas or in the case at bar. Indeed, there was not any entry upon the premises to effectuate termination of service either in Lucas or in this case. Moreover, the Lucas court strongly implied that its decision would have been different if there had been entry pursuant to such specific statutory authorization. In Ihrke, there was a showing of direct benefit to the City of St. Paul in the form of participation by the city in the revenues of the utility. Significant and substantial state involvement in the activity complained of is the measure by which the presence of non-obvious state action is determined and it exists in some cases, as in Ihrke and Palmer, and in other cases, as in Kadlec, Lucas and the case at bar, it does not. We submit that before a conflict between circuit courts of appeals should be declared to exist two essential subsidiary findings should be made: (1) the existence of differences in result, and (2) a substantial similarity in factual background. Only the first of the two ingredients exists here.

The Decision of the Court Below Is Not in Conflict With Applicable Decisions of This Court

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Since this Court's decision in Burton v. Wilmington Parking Authority, 365 U. S. 715 (1961), and pursuant to the enjoinment in the opinion in that case that in determining the presence of non-obvious state involvement the facts must be sifted and the circumstances weighed, the federal courts have been doing just that, and because facts and circumstances will and do vary, it is not surprising that the results themselves vary, as mentioned earlier. This Court, in Burton, referred to the work of devising some applicable, precise, and definitive standard in the state action context as "an impossible task" and, it would appear, that it is that task which petitioner in this case is asking the Court to undertake. It is interesting to note that the petitioner does not shrink from advocating in the one petition what to respondent seems to be inconsistent positions, namely, that the decision of the court below is in conflict with applicable decisions of this Court and that this case presents an important question of federal law which has not, but ought to be, decided by this Court. But petitioner complains at least as much of what she styles, erroneously, as the lower court's "one dimensional analysis" as she does of its final judgment. The court below is not guilty as charged of having "avoided a comprehensive analysis of the state action issue" (Petition, page 5) and it should be noted that its approach to the problem of resolving the question of state action presence commenced (AII-4) by confessing that it is difficult in so complex a field to summarize without intending to be all inclusive and by setting forth in general outline the circumstances under which findings of state action may be made. The court then proceeded to rule out each by a process of elimination. Certainly, such an approach cannot correctly be said to constitute a "one dimensional analysis" but is, rather, consistent with a multi-faceted analysis.

The opinion of the lower court is replete with citations to opinions by this Court felt applicable to the resolution of the questions presented by this case. A studied examination of those opinions reveals that they do in fact

support the propositions for which they are cited as well as the judgment sought to be reviewed.

This Case Does Not Involve Important Questions of Federal Law Which Heretofore Have Not Been, But Which Now Should Be, Settled By This Court.

A privately owned utility is not obligated to provide service to its customers free of charge. But it is petitioner's position that even privately furnished power cannot be terminated to a non-paying subscriber without both notice and an opportunity to be heard. To be sure, it does appear that the common law conditions the right of a public utility, whether municipal or private, to terminate for nonpayment upon its giving notice of its intent to terminate. In point of fact, in its self-adopted rules constituting its electric tariff (AIII-7) filed with the regulatory body, respondent itself expressly conditions its reservation of the right to discontinue service in the event of nonpayment upon its first giving reasonable notice. In any event, petitioner's concern is not so much, if at all, with notice(which she received) as it is with there being no provision for a pre-termination hearing procedure. But in this regard, neither the common law nor respondent's electric tariff requires a hearing as a pre-condition to respondent's proper exercise of its right as a private supplier to discontinue service to a non-paying customer. Neither does the Fourteenth Amendment to the Constitution of the United States, either standing alone or read in conjunction with 42 U. S. C. 1983 (The Civil Rights Act), prohibit individuals in their private conduct from depriving one another of property without due process. The Amendment enjoins the states from depriving persons of property without due process of law and the Civil Rights Act enjoins individuals, acting under color of state or territorial statute, ordinance, regulation, custom or usage, from subjecting United States citizens or inhabitants to deprivations of federally secured rights, privileges or immunities. Having no right, state or federal, to free electrical service, petitioner's only federally secured right or privilege is the right to due process of law before being deprived by the state of property. But where, as here, no statute, ordinance, regulation, custom or usage of the

state is involved, which is to say that no state action is present, no right to due process is established. Hence, no important federal question is presented.

CONCLUSION

The action of respondent, a privately owned electrical utility, in terminating service to petitioner for nonpayment of bill for power consumed by her having been taken under circumstances not shown to involve specific statutory or regulatory authorization or participation by the state, was private action. Though the several United States Circuit Courts of Appeals which have considered this question and have adhered to this Court's admonition in Burton, supra, to sift the facts and weigh the circumstances when determining the presence or absence of non-obvious state involvement, have arrived at varying results due to the differing factual situations of the particular cases before them, a conflict among the circuits is not made out by a mere showing of result differences, absent substantially similar factual situations, and uniformity of decisional result in this area is, in any event, neither necessary nor possible. The decision of the court below is not in conflict with applicable decisions of this Court and, because no important federal question is either presented or involved by the petition, none needs be settled.

Respectfully submitted,

Of Counsel:

LEO M. McCORMACK
420 Miller Building
422 Spruce Street
Scranton, Pennsylvania 18503

RUSSELL J. O'MALLEY
PAUL A. BARRETT
420 Miller Building
422 Spruce Street
Scranton, Pennsylvania 18503
Attorneys for Respondent,
Metropolitan Edison Company

December 31, 1973

SUPREME COURT
OF THE UNITED STATES

CATHERINE JACKSON, ON BEHALF OF HERSELF
AND ALL OTHERS SIMILARLY SITUATED

APPELLANT

V.

METROPOLITAN EDISON COMPANY,
A PENNSYLVANIA CORPORATION

CERTIFICATE OF SERVICE

Paul A. Barrett, Esquire, having been duly sworn according to law, deposes and says that copies of the accompanying Brief for Respondent, Metropolitan Edison Company, in opposition to Petition for Writ of Certiorari were deposited in the United States Mails at the Post Office, Scranton, Pennsylvania, on the 28th day of December, 1973, addressed to the following counsel for Petitioner and other counsel, as indicated, at the addresses hereinafter appearing:

a) Alan Linder, Esquire, Eugene F. Zenobi, Esquire, J. Richard Gray, Esquire, Tri-County Legal Services, 53 North Duke Street, Lancaster, Pennsylvania 17602.

b) Edward J. Dailey, Esquire, and Richard Hesse, Esquire, National Consumer Law Center, 1 Court Street, Boston, Massachusetts 02108.

c) James R. Adams, Esquire, Deputy Attorney General, Department of Justice, Capitol Annex Building, Harrisburg, Pennsylvania 17120.

d) Jonathan M. Stein, Esquire, I. David Pincus, Esquire, David Ackerman, Esquire, Community Legal Services, 313 South Juniper Street, Philadelphia, Pennsylvania.

Paul A Barrett

Paul A. Barrett, Esquire
ATTORNEY FOR RESPONDENT

Sworn to and subscribed
before me this 28th day
of December, 1973

Drue M. Port
Notary Public

My commission expires:

DRUE M. PORT, Notary Public
Scranton, Lacka. Co. Pa. 18503
My Commission Expires Nov. 21, 1977